

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1074 of 2016

- Chandresh Sahu S/o Shri Shivram Sahu, Aged About 45 Years, Former Tahsildar, Tahsil Durg, At Present Tahsildar, Tahsil Bagbahara, District Mahasamund, Chhattisgarh, Permanent R/o Village Hardi, Police Station Gariyaband, District Raipur, Chhattisgarh.

---- Petitioner

Versus

- State of Chhattisgarh Police Station Durg, District Durg, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri T.K. Tiwari, Advocate
For State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

C A V Order

19/05/2017

1. By way of present revision petition, filed under Section 397 read with Section 401 of the Code of Criminal Procedure, the petitioner has assailed the legality and validity of the order dated 18/10/2016 passed by the Special Judge (Anti Corruption), Durg in Criminal Case No. 3/09, whereby the petitioner's application under Section 19 sub-Section 4 of the Prevention of the Atrocities Act, 1988 has been rejected.
2. By the said application, the petitioner prayed that the criminal proceedings against the petitioner be dropped and he be

discharged as there is no valid and proper sanction for prosecution of the petitioner for alleged commission of offence under Section 7, 13(1)(d), 13(2) of the Prevention of Atrocities Act, 1988.

3. On the allegation of the complainant that the petitioner is demanding a bribe of Rs.5000/- towards passing of a favorable order in favour of the complainant, a trap was arranged by Anti Corruption Bureau. According to the case of prosecution, in the trap arranged, Rs.5000/- were recovered from under the table of the petitioner and when his hands were washed in the solution of Phenolphthalein, it prima facie indicated that the petitioner handled the tainted notes. The Anti Corruption Bureau, after completion of the trap proceedings, carried investigation and filed charge-sheet against the petitioner, on the allegation of having committed offence as described above. The Anti Corruption Bureau, thereafter sought sanction for prosecution which was granted vide order dated 17/07/2009 by the Law & Legislative Affairs Department of the State of Chhattisgarh. With the said sanction for prosecution, charge-sheet was filed against the petitioner. When the petitioner moved an application for examination of all the witnesses of the prosecution, who had passed the order of sanction, the Additional Secretary, Department of law and the Secretary, Department of Revenue were examined. However, the petitioner's application under Section 19(4) of the Prevention of Corruption Act for his discharge on the ground that the sanction is not valid and proper,

was rejected by the impugned order.

4. The main contention of learned counsel for the petitioner is that admittedly the petitioner's appointing authority was the Secretary, Department of Revenue and it was proved by the evidence of the Secretary of that department that the petitioner's department had not granted sanction as no case was made out upon perusal, grant of sanction by the Secretary, Law & Legislative Affairs Department, which is not the appointing authority of the petitioner, is illegal and in violation of the provision contained under Section 19 of the Prevention of Corruption Act. It was vehemently argued that the competent authority of the petitioner would be the Secretary of his controlling department i.e. Department of Revenue to grant sanction and once the Secretary of the Department refused to grant sanction, it was not within the province of authority of the Secretary Department of Law & Legislative Affairs to grant sanction. It is also submitted that present is a case where despite refusal of grant sanction on a given material, submitted by the Anti Corruption Bureau, a review of the matter was made by the Law & Legislative Affairs Department, which is not permissible in the law unless new material was brought to justify grant of sanction.

5. The legal issue raised by the petitioner in the present case is squarely covered by this Court in the case of ***Maxi Kujur vs. State of Chhattisgarh*** in ***Criminal Revision No. 1120 of 2016***

order dated 12/04/2017. In that case, an identical issue was raised that the controlling department of the accused having not granted any sanction, the Department of Law & Legislative Affairs was not competent to grant sanction. Taking into consideration the relevant provisions of law in the light of various decision of the Supreme Court and the High Courts, relevant notifications which are applicable in the present case also and relying upon decision of the Supreme Court in the cases of ***Prakash Singh Badal & Another vs. State of Punjab & Ors.*, AIR 2007 SC 1274**, ***State v. T. Venkatesh Murthy*, (2004) 7 SCC 763**, ***'Ashok Tshering Bhutia vs. State of Sikkim'* (2011) 4 SCC 402**, ***'State of Bihar and Others vs. Rajmangal Ram'* 2014 (11) SCC 388** and ***'State of Madhya Pradesh & Ors. vs. Anand Mohan & Anr.'* 2015 AIR SCW 4270**, it was held:-

“13. The judicially evolved principles stated and restated repeatedly by the Supreme Court make it impermissible to throttle the prosecution at the very threshold only on the allegations of omission, error or irregularity including alleged invalidity of order of sanction. It would be relevant to mention here that in the case of Rajmangal Ram (supra), the criminal proceedings were interdicted on the ground that the Law Department was not a competent authority to accord sanction for prosecution. Even that was not held to be permissible ground to interdict the proceeding by clearly observing as below in para 9 :-

“9. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been

occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.”

Therefore, what follows from the aforesaid judicial pronouncement of Apex Court is that all the questions relating to irregularity, invalidity and even absence of jurisdiction or alleged incompetency of the sanctioning authority would not be a matter for consideration nor would not constitute ground to interdict criminal proceeding because unless failure of justice has been occasioned, the trial may not be held to be vitiated.

14. Even otherwise, in so far as the ground of incompetency of the Law & Legislative Affairs Department to grant sanction is concerned, the controversy stands resolved and no longer res integra in view of the decision of the Apex Court in State of Madhya Pradesh & Ors. vs. Anand Mohan & Anr., 2015 AIR SCW 4270. That was a case involving an issue relating to competency of the Depart of Law and Justice of the State of Madhya Pradesh in the factual background that the accused were employees of Department of Housing and Environment, Govt. of Madhya Pradesh. The contention advanced was that as the competent authority to grant sanction was the Secretary of Housing and Environment of the Government, which had declined to grant sanction, grant of sanction by the Legislative Department was illegal. The issue of competency of Law & Legislative Affairs Department was examined with reference to provision contained in Section 19(1)(b) and delegation of power under the Rules of business under various statutory notification issued by the

Governor in exercise of power conferred by clauses 2 & 3 of Article 166 of the Constitution of India, on 03/02/1988, 10/07/1997 and 28/02/1988.

At this stage, it would be relevant to mention here that the prior to reorganization of State of Madhya Pradesh under the Madhya Pradesh Re-organization Act, 2000, by which, with effect from 01/11/2000, the successor States of Madhya Pradesh and Chhattisgarh came into existence, the orders, notifications issued in the State of Madhya Pradesh prior to 01/11/2000 became applicable in the State of Chhattisgarh also, though the successor State of Chhattisgarh was empowered under the provisions of the Re-organization Act to adapt the laws. Therefore, the legal position that existed prior to 01/11/2000, would equally apply in the State of Chhattisgarh unless it is established that the legal position has changed after appointed date i.e. 01/11/2000 in the State of Chhattisgarh by subsequent enactment or amendment, modification in the laws applicable on the appointed day.

The aforesaid decision of the Supreme Court which resolved the issue with regard to competency of the Department of Law & Legislative Affairs to grant sanction in the matter of prosecution of government officers, irrespective of the department to which they belong, would be equally applicable, even on facts, in the present case also. The notification which has been referred to in the order of learned trial Court in the present case, fell for consideration of the Supreme Court in the case of Anand Mohan (supra) also. The learned trial Court relied on the decision of the Supreme Court in the case of Anand Mohan (supra). In the aforesaid decision relying upon various notifications, rules of business and legal position the Supreme Court held

thus :-

"10. By the Order dated 28.02.1998, the State Government further clarified that in the matters of sanction for prosecution, the papers shall be sent by the Department of Law and Legislative Affairs along the record to the Administrative Department for its opinion and the Administrative Department shall give the same within a period of one month, whereafter Department of Law and Legislative Affairs shall take a decision.

11. It is not disputed that State of Madhya Pradesh Economic Offence Wing registered Crime No. 28 of 2004 in respect of offences under Sections 420, 467, 468, 471 and 120B IPC and under Section 13(1) (d) read with Section 13 (2) Prevention of Corruption Act, 1988 against the respondents on the allegation that the respondents in connivance with others prepared forged note sheet, and made payment of Rs. 9,51,657/- to a contractor abusing their position. It is also not disputed that when the EOW sought sanction for prosecution from Department of Housing and Environment, it declined the sanction vide order dated 08.03.2011 (Annexure P-6). Question before us is that whether the Department of Law and Legislative Affairs which granted the sanction vide its order dated 20.11.2012 (Annexure P-8) was competent to do so or not.

12. The High Court in the impugned order observed that the (EOW) did not challenge legality and validity of order dated 08.03.2011, and submitted the charge sheet. It further held that since the appellant No. 2 was conferred

power to grant the sanction only vide circular dated 28.02.1998, as such it was not competent to grant the sanction relating offences alleged to have been committed in the year 1997.

13. We are unable to accept the view taken by the High Court for the reason that from annexure P-1 and annexure P-2, it is evident that the power to grant the sanction for prosecution, already existed with the Department of Law and Legislative Affairs, since February, 1988. The circular letter dated 28.02.1998 (Annexure P-5) does not confer any new power and it only clarifies that Department of Law and Justice is a competent authority not only in respect of investigations made by Lokayukta Organization, but also the State Economic Offences Investigation Wing. The power with the appellant No.2 to grant the sanction is, in fact, conferred by the rule as amended vide notification dated 03.02.1988 published in the Official Gazette. After such amendment in the rule whereby power to grant sanction was delegated to Department of Law and Justice, it cannot said that Administrative Department had power to decline sanction as it has done vide its order dated 10.07.1997.”

It has to be noted that aforesaid was a case where the administrative department had declined to sanction but the sanction granted by the Department of Law & Legislative Affairs was held to be valid.

15. In view of the above consideration, inevitable conclusion is that the Department of Law & Legislative Affairs, State of Chhattisgarh is legally competent to grant sanction for prosecution

irrespective of Department to which the accused officer belongs. Not only that, the opinion of the administrative department is not binding upon the Law & Legislative Affairs Department and once the Law & Legislative Affairs Department has consulted the Administrative Department, it can reach its own conclusion. Whether the alleged irregularity in sanction has resulted in failure of justice would be a matter for consideration during the trial and not at any prior stage much less a stage prior to framing of charge. Such applications for dropping the criminal proceedings upon filing of charge-sheet are held to be not maintainable. Learned trial Court has not committed any illegality in rejecting the application. Petition has no merit and therefore liable to be dismissed and accordingly dismissed.”

6. The legal position as expounded by the Supreme Court and relied upon and applied in identical case of *Maxi Kujur (supra)* the petitioner's argument that the Department of Law & Legislative Affairs of State was not competent to grant sanction is liable to be rejected.

7. The other submission that there was review of the decision not to grant sanction, for the reason stated above, is misplaced in law. Present is not a case where initially the Law Department had refused to grant sanction and thereafter on the same material, sanction was granted so as to say that such sanction was contrary to the verdict of the Supreme Court in case of ***State of Himachal Pradesh vs. Nishant Sareen, AIR 2011 SC 404.***

Present is a case where the controlling department had given its opinion, however, the said opinion is not binding on the Law & Legislative Affairs Department, in view of what has been held by the Supreme Court in case of *State of M.P. vs. Anand Mohan* (supra) discussed herein above.

8. Thus, the contention raised by the petitioner are liable to be rejected and the prosecution cannot be quashed. At this stage, the petitioner has to face prosecution. The petition is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Kamde